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Teleconference

1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

-----x

3 ROBERT JONES  
4 #141-15-02468  
5 NYSID #04757650Q  
6 Otis Bantum Corr. Center  
7 1600 Hazen Street  
8 E. Elmhurst, NY 11370,

Plaintiff,

v.

14 Civ. 06402 KPF

9 JAMES MEEHAN, "NYPD" Police  
10 Detectives Shield #6445, et al.,

Defendants.

-----x

12 February 26, 2016  
13 10:10 a.m.

14 Before:

15 HON. KATHERINE POLK FAILLA,

16 District Judge

17  
18 APPEARANCES

19 WINSTON & STRAWN, LL (NY)  
20 Attorneys for plaintiff  
21 BY: JESSICA GREER MARY GRIFFITH, Esq.  
22 Of counsel

23 MICHAEL A. CARDOZO,  
24 Corporation Counsel for the  
25 City of New York  
100 Church Street  
New York, New York 10007  
MARIA FERNANDA DeCASTRO,  
Assistant Corporation Counsel

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(Teleconference in Chambers)

THE COURT: Good morning to both of you.

Is Ms. Griffith not participating in the call today?

MS. DeCASTRO: I thought Ms. Griffith was just appearing for the limited purpose of writing the motion for plaintiff on the affirmative defenses.

THE COURT: It would be my view if she went through the trouble of writing it, she should at least be able to argue it, no?

MS. DeCASTRO: I apologize, your Honor. Yes, I realize she should be participating. I have not heard from her regarding this at all. I should try to get her on the phone if it please the court.

THE COURT: I am just wondering, I do want to hear from Mr. Jones, and I will hear from both of you about the other matters in the case. To the extent we are talking about the motion to strike, that is, in fact, something on which I specifically wanted their input, so I certainly thought at least they would be invited to participate.

Let me back up a moment. Are they not aware of this proceeding this morning? There was an order that was issued, was it not?

MS. DeCASTRO: Yes, there was. I don't know if -- in my limited conversations with her, I guess she probably didn't realize at the initial conference we would be discussing the

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1 motions that were filed.

2 THE COURT: Okay. Ms. DeCastro, let me explain.

3 Obviously, it took some doing on your part to be able  
4 to arrange a call with Mr. Jones. I know that those can't  
5 happen without some things happening in the background, but  
6 certainly it would have been and it is my preference to have  
7 Ms. Griffith participate in this as well.

8 Is there a way you can put me and Mr. Jones on hold  
9 and see if you cannot reach Ms. Griffith?

10 MS. DeCASTRO: Of course, your Honor.

11 THE COURT: Okay. Just a second. I am here. Thank  
12 you. Mr. Jones, I will thank you in advance for your patience  
13 as well, sir.

14 MR. JONES: Thank you. I appreciate that, Judge.

15 Thank you.

16 (Pause)

17 (Off-the-record discussion)

18 MS. GRIFFITH: How are you?

19 THE COURT: Ms. Griffith, this is Judge Failla. Good  
20 morning to you, and I am sorry to give you absolutely no notice  
21 about this. There is a call this morning in the Jones versus  
22 Meehan case. You were kind enough to help us on the issue of  
23 the motion to strike affirmative defenses, and given that you  
24 had done all the work, I wanted to know if you also wanted to  
25 be present for this call?

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1 MS. GRIFFITH: Sure, I would be happy to attend the  
2 call. I know I didn't think I was responsible and I didn't  
3 know if you wanted me to participate in the call since we were  
4 only appointed on the limited matter we briefed, but I am happy  
5 to partake.

6 THE COURT: I am happy to have you. All right.

7 Here is what I would like to do, and I am going to  
8 begin by asking Ms. DeCastro before I forget, Ms. DeCastro, at  
9 the end of this proceeding or after this proceeding has  
10 concluded, I am going to ask you please to obtain a transcript  
11 of this matter, and I am going to ask you to send a copy,  
12 please, to Mr. Jones. Ms. Griffith will get a copy  
13 automatically because she is on the docket, and I will get a  
14 copy automatically because I am receiving these entries as  
15 well. Can you please do that?

16 MS. DeCASTRO: Yes, of course, your Honor.

17 THE COURT: Thank you so much. Mr. Jones, I am going  
18 to begin with you. Good morning to you, sir.

19 MR. JONES: Good morning, Judge.

20 THE COURT: Mr. Jones, there are a couple of issues on  
21 the docket for us today and one of them is your motion from I  
22 believe October of last year to strike the affirmative  
23 defenses.

24 Now, sir, you raised some very interesting issues, as  
25 you saw, and so what I did, because I wanted sort of get the

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1 most current legal thoughts on the issue, I asked for Ms.  
2 Griffith and her law firm to be appointed to assist you in this  
3 regard. I am going to ask her to talk about the particular  
4 order that I issued asking for additional briefing. Is that  
5 all right with you, sir, if I have Ms. Griffith argue your side  
6 on the issue of the motion to strike?

7 MR. JONES: Yes, Judge, I would appreciate that.

8 Thank you.

9 THE COURT: Ms. Griffith, first of all, I thank you, I  
10 thank your law law firm for assisting in this matter. We on  
11 this side, the Court side, appreciate the care and the  
12 attention to the work you did. Ms. DeCastro, we like your  
13 work, too, but obviously we didn't order you to do something.  
14 So you have a different thank you from us.

15 Ms. Griffith, while I have you on the line and without  
16 meaning to put you on the spot, I do want to make sure I  
17 understand the arguments a little bit. Are you prepared to  
18 talk a little bit about your brief?

19 MS. GRIFFITH: I would probably prefer to refresh  
20 myself before giving oral argument on the brief, if that is  
21 possible at all? I am sorry, I didn't realize the call was  
22 happening this morning.

23 THE COURT: Of course. I guess the issue this is.

24 Unfortunately, because of Mr. Jones' station and where  
25 he is right now, it is a little difficult to set up these

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1 calls. Perhaps what I will do then is why don't you look at  
2 your brief as I am talking to Ms. DeCastro. Does that make  
3 sense?

4 MS. GRIFFITH: Sure. Thank you.

5 THE COURT: Thank you very much.

6 Ms. DeCastro, let me then talk to you. One of your  
7 principal arguments is that there are textural differences. Is  
8 there really? Do they really make a difference for the purpose  
9 of the standard I should be using in considering affirmative  
10 defenses?

11 MS. DeCASTRO: Well, your Honor, it is the city's  
12 position that it does. The standards are that a person under 8  
13 (a)(2) is the person must -- pleadings -- sorry. I apologize.

14 THE COURT: Start again.

15 MS. DeCASTRO: -- requires the pleadings show --

16 THE COURT: Ms. DeCastro, because we are on the phone,  
17 I will ask you to speak a little slower so the Court Reporter  
18 can get down everything you're saying.

19 Thank you so much.

20 MS. DeCASTRO: Yes, your Honor, of course.

21 It is the city's position it does make a textural  
22 difference because Rule 8 (a)(2) requires pleadings show how  
23 they are entitled to relief. By contrast, Rule 8 (c)(1), which  
24 governs affirmative defenses, merely states that a party has to  
25 state the defense. It doesn't require that they show how

1 they're entitled to that defense.

2 THE COURT: All right. Here is one Judge's thoughts  
3 on the issue. It seems to me that to the extent you're arguing  
4 that if plaintiffs need more information, they can get it  
5 through discovery, I suppose that can be said as well to  
6 defendants, who can get more information during discovery about  
7 the plaintiff's claims, and yet we still have Twombly and  
8 Iqbal.

9 I think to my mind, the stronger argument -- and I  
10 want to explore it with you a little bit more -- is your  
11 argument that the purposes of each or the relationship of each  
12 type of pleading to discovery obligations is different. So I  
13 think I am understanding you to say that while a complaint  
14 triggers the discovery process, what you've got in the context  
15 of an affirmative defense is merely an expansion of or a gloss  
16 on the discovery process.

17 Could you speak a little bit to me more about that  
18 point, first of all, whether I have understood it correctly;  
19 and, second of all, whether if I have, how that makes a  
20 difference in the amount of detail that you are seeking.

21 MS. DeCASTRO: Yes, your Honor, I can speak to that.

22 First of all, as your Honor knows especially in these  
23 kinds of 1983 cases, plaintiffs have up to three years from the  
24 time the action arose to bring, from the time the claim arose  
25 to bring a claim. That gives plaintiffs three years to develop

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1 their case, to gather enough evidence necessary to show how  
2 they're entitled to relief, whereas defendants merely get 21  
3 days from the date they're served with a complaint to assert  
4 affirmative defenses.

5 That limited amount of time rarely gives defendants  
6 enough time to fully explore all of the affirmative defenses  
7 that need to be stated. A lot of these affirmative defenses  
8 are ones we would waive if not pled. I think the differences  
9 between the positions that plaintiffs are in when they file the  
10 case and the position the defendant is in when they answer a  
11 complaint are justified that that standard not be extended to  
12 apply to affirmative defenses.

13 THE COURT: Ms. DeCastro, have you read Iqbal and  
14 Twombly in connection with the papers you submitted to me?

15 MS. DeCASTRO: Yes, your Honor.

16 My understanding of the court's interpretation of  
17 Iqbal and Twombly -- certain courts -- is that Iqbal and  
18 Twombly was more concerned about the fact that, as you stated,  
19 discovery, the complaint does open the doors of discovery,  
20 whereas affirmative defenses, while they may be inquired into  
21 in discovery, they do not unlock these doors.

22 THE COURT: All right. I am recalling correctly that  
23 Iqbal and Twombly spoke not at all to the issue of affirmative  
24 defenses; that's correct?

25 MS. DeCASTRO: Yes, your Honor.



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1           THE COURT: Is there something in Iqbal and Twombly  
2 other than what you have just mentioned about the relationship  
3 to discovery that suggests that its reasoning is inapplicable  
4 or should not be applied to affirmative defenses? Let me back  
5 up a little bit and explain that a little bit better.

6           My understanding of sort of the principles of Iqbal  
7 and Twombly are that I am to accept all well-pleaded  
8 allegations as true and I am to determine whether these  
9 well-pleaded allegations suffice to state a claim that is  
10 plausible. So is there something about the rationale for these  
11 two decisions that does not lend itself or does not translate  
12 into the context of affirmative defenses?

13          MS. DeCASTRO: Well, your Honor, honestly, Iqbal and  
14 Twombly, they're concerned about pleading standards could  
15 possibly extend itself to affirmative defenses, is we are just  
16 plainly reading the decisions of not considering what the  
17 court's reasoning was in establishing a heightened pleading  
18 standard.

19          However, it is defendants' position that should the  
20 court explore this again, we do not believe that given the  
21 court's concerns in Iqbal and Twombly, it would apply to  
22 affirmative defenses.

23          THE COURT: All right. You would agree with me, would  
24 you not, that I ought to consider Rule 8 in the affirmative  
25 defenses? In fact, I am directed to consider Rule 8, correct?

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1 MS. DeCASTRO: Yes, your Honor.

2 THE COURT: Is it your view that the standards should  
3 be fair notice?

4 MS. DeCASTRO: Yes, your Honor, but I think that the  
5 affirmative defenses we have asserted provide fair notice of  
6 the defenses that we intend to raise.

7 THE COURT: Okay. Let me hear from you a little bit  
8 more about that because I'm going to look at them right now.

9 One of them, the seventh affirmative defense, is a  
10 failure to comply with New York General Municipal Law, Section  
11 50 (e), and I presume the remainder of that section. Is it  
12 your view that Mr. Jones needs no further understanding of the  
13 nature of your affirmative defenses?

14 MS. DeCASTRO: Well, your Honor, I guess that  
15 provision, at least the reasons we asserted are that we have  
16 not, although Mr. Jones attached a notice of claim to his  
17 complaint, we have not been able to find that notice of claim  
18 actually filed with the Comptroller's Office. While I  
19 understand that Mr. Jones is pro se, so it is harder for him to  
20 understand General Municipal Law 50 and as to what that would  
21 entail --

22 THE COURT: Yes.

23 MS. DeCASTRO: -- that is an affirmative defense we  
24 asserted. At the time we asserted it, it wasn't clear to us  
25 even if he had done a 50 (h) hearing or anything of that

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1 nature, and that requires a little bit of more time and more  
2 investigation, which goes back to our point we are only given a  
3 limited amount of time to answer these complaints at the time  
4 we are served with them.

5 THE COURT: Are you suggesting then the affirmative  
6 defenses are a place-holder in the first instance?

7 MS. DeCASTRO: I am not suggesting that, but what I am  
8 saying is we tried to assert the affirmative defenses, given  
9 the case as we see them and at the time we get them, we  
10 understand to be reasonable and that can be asserted.

11 THE COURT: Ms. Griffith, can I turn to you?

12 MS. GRIFFITH: Sure.

13 THE COURT: Thank you so much.

14 I am going to begin with one of the same questions I  
15 just asked your adversary, which is understanding sort of the  
16 rationale of Twombly and Iqbal do concern well-pleaded  
17 allegations, well-pleaded facts that lent themselves to claims  
18 and whether those claims are plausible, why should I extend  
19 that into affirmative defenses?

20 MS. GRIFFITH: Your Honor, I think the need for more  
21 specific pleadings should be extended to affirmative defenses  
22 for much the same reason that they're required for normal  
23 defense pleadings and for pleadings contained in the complaint.

24 To start with dealing with the policy considerations,  
25 the court must always be conscious of efficiencies and cost

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1 reduction.

2 THE COURT: I will ask you to speak slower as well,  
3 please. Thank you so much.

4 I do hear what you're saying, but is it really  
5 efficient to do a motion to strike?

6 My just under three years of experience as a Judge has  
7 suggested to me that there are very few of these motions, and I  
8 am not sure that they really do impact the nature of the  
9 discovery sought, but is it your position that, in fact, this  
10 would have an impact on reducing the costs of litigation, and  
11 thereby making them more efficient?

12 MS. GRIFFITH: Well, your Honor, I think this would be  
13 a prime example of a case where this would be useful, where the  
14 affirmative defenses pled are really standard boilerplate  
15 affirmative defenses such as, if I recall correctly, the one  
16 concerning the statute of limitations.

17 It would be quite simple for the defendants asserting  
18 the statute of limitation affirmative defense to have just  
19 provided which, what is the time limit, what claims they're  
20 alleging in the affirmative defense. This way it would help  
21 the plaintiff understand where the affirmative defenses are  
22 coming from and where discovery should start.

23 THE COURT: I want to follow up on that because that  
24 is an affirmative defense that is of interest to me as well.

25 If you had drafted these using the standards that you

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1 wish me to adopt, what would you have said for the 11th  
2 affirmative defense?

3 MS. GRIFFITH: Your Honor, I apologize. I did not  
4 know the call was going on right now. I don't have the  
5 affirmative defense right --

6 THE COURT: I am sorry. That is fine. I sprung this  
7 on you and I know that. You said the 11th affirmative defense  
8 is plaintiff's claims are barred by the applicable statutes of  
9 limitations. So my question to you is, if you had done this  
10 defense, how much more explicit, how much more detailed do you  
11 think it should have been?

12 MS. GRIFFITH: Well, I know that plaintiff is alleging  
13 a variety of claims in his complaint, and so I think the  
14 affirmative defense would have had to address the time  
15 limitations for the different claims that plaintiff included in  
16 his complaint.

17 THE COURT: I see. So would you have specifically  
18 wanted them to say why it was barred by the statute of  
19 limitations?

20 MS. GRIFFITH: Yes, your Honor. Even if they did not  
21 give a specific flushing-out reason for why, to have at least  
22 addressed the different claims that plaintiff included in his  
23 complaint and the time limits for each of those complaints such  
24 as inadequate medical attention or violation of self-rights or  
25 privacy to his DNA, genetic material.

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1           THE COURT: Would your argument hold or be the same  
2 for the failure to state a claim because that is as boilerplate  
3 as it gets, but yet I have seen it in pretty much every  
4 complaint I have ever seen as an affirmative defense. Let me  
5 try to make it a more coherent question to you.

6           Is it your view that the defendants were required in  
7 their first affirmative defense, which is failure to state a  
8 claim, to specifically explain every way in which they believe  
9 the complaint fails to state a claim?

10          MS. GRIFFITH: I think that that would certainly be  
11 helpful to the plaintiff who is alleging the complaint.

12          However, I understand that the defense, having only a  
13 21-day-time period, might not have the time to fully flush out  
14 that argument. I think the appropriate action the defendants  
15 could have taken would be to either raise some of the issues in  
16 the affirmative defense to provide some more information for  
17 the plaintiff or to ask the court for an extension of time to  
18 more fully flush out the argument.

19          THE COURT: Okay, I guess my concern would be that  
20 asking for an extension of time is not going to get them  
21 discovery in the case. They're not going to get discovery  
22 until they've actually filed the answer.

23          I suppose the fall-back position would be asking for  
24 leave to amend. At some point if they're amending at the close  
25 of discovery, I am not sure I'd be granting it. I understand

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1 the argument. Hold on one moment, please, I want to make sure  
2 I am asking all of my questions.

3 MS. GRIFFITH: Sure.

4 (Pause)

5 THE COURT: All right. Ms. Griffith, what is your  
6 view on fairness and what role that plays or does not play in  
7 the affirmative defense context and with what granularity a  
8 defendant should be given fair notice of affirmative defenses?

9 MS. GRIFFITH: I think the starting point for the fair  
10 notice argument would be that for fairness purposes, a  
11 plaintiff and not just the defendant should be receiving fair  
12 notice so that they're understanding the factual context of the  
13 basis of the defense. Similar to why there is the standard,  
14 the specificity of the pleadings should be in a complaint, it  
15 should similarly apply to claims in affirmative defenses.

16 THE COURT: Let me ask you, I don't actually have any  
17 more specific questions, but if there is anything in your brief  
18 you want to sort of make sure I hear and understand at this  
19 time, I would be happy for you to call it to my attention. I  
20 have your brief here.

21 MS. GRIFFITH: I think I would really just emphasize,  
22 your Honor, the importance of making sure that both parties are  
23 being treated the same and that the policy considerations of  
24 fairness guide your decision.

25 I also would stress, I know when you were speaking to

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1 defense counsel, you were talking about the time difference  
2 between the parties, how the plaintiff has more time to file a  
3 complaint than the defendants have to file an answer with  
4 affirmative defenses, and I would just want to raise to your  
5 attention Rule 15 instructs the court to freely give leave to  
6 defendants after additional facts become available to amend the  
7 answer, so I did not think you should base your decision on the  
8 fact that there are only 21 days to file affirmative defenses,  
9 since if needed and more facts become available, they will have  
10 more time just as plaintiffs had more time to file their  
11 complaint.

12 THE COURT: Thank you very much.

13 Ms. DeCastro, is there anything else you want to call  
14 to my attention?

15 MS. DeCASTRO: Yes, your Honor.

16 On the fair notice point, I would like to stress again  
17 that even boilerplate affirmative defenses have been found to  
18 give fair notice because it locks down what the defendants are  
19 intending to use at trial, and I understand that this is a pro  
20 se case, so possibly pro se plaintiffs do not know the law and  
21 it may be harder for them using the boilerplate affirmative  
22 defenses.

23 However, I do want to stress the point that many  
24 courts have found that boilerplate affirmative defenses do  
25 provide fair notice and affirmative defenses that are pled in



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1 general terms provide plaintiffs notice with what defendants  
2 intend to use at trial.

3 THE COURT: Okay. All right. Thank you very much  
4 both. Let me then resolve this motion because that was the  
5 first order of business on this call. I want to thank you both  
6 because I think that there are two schools of thought.

7 I think you have Judge Swain's opinion that everyone  
8 points to on the idea they should be read to apply equally to  
9 both settings, and then most recently there is Judge Wood's  
10 opinion, and I am still struck by the fact that the Second  
11 Circuit hasn't addressed the issue and no circuit court has  
12 addressed the issue.

13 I can understand why it might not be on the Supreme  
14 Court's docket, but it would be nice if I got some guidance  
15 from my own circuit as to what to do. I have looked at the  
16 cases you you both have called to my attention. I looked at  
17 your briefs. I think each of you has stated your position as  
18 best you can, and so I am grateful for that because it makes my  
19 job easier and harder at the same time, but at least I feel as  
20 though I was informed when I went into it.

21 Ultimately I am going to deny the motion to strike,  
22 and that is because I might not accept fully the argument there  
23 are meaningful textural differences between Rule 8 (a) and 8  
24 (c). For me what is significant is that both of them require a  
25 short and plain statement, and from that I am discerning, a

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1 fair notice requirement from the Twombly decision. I think  
2 that what counts as fairness is different for plaintiffs who  
3 are bringing claims and for defendants who are interposing  
4 affirmative defenses to them.

5 I accept to a degree the notion that plaintiffs have  
6 more time and that plaintiffs have invited and, in fact,  
7 engendered the litigation. Because of that, and while  
8 recognizing there is Rule 15, but also recognizing there is  
9 Rule 16, I believe that affirmative defenses that are sort of  
10 typical in these cases can and often give plaintiffs fair  
11 notice under some circumstances.

12 I will say this, though. It is my view that what we  
13 call a boilerplate defense provides fairness would depend on  
14 the particular defense, so telling me statute of limitations, I  
15 think that might be enough to put a plaintiff on notice that  
16 there is at least some question about the timing of certain of  
17 the claims, but if there is a defense of fraud or illegality, I  
18 think I would want more detail.

19 So looking at the affirmative defenses in this case, I  
20 believe that they give Mr. Jones fair notice because they  
21 provide meaningful guidance to him and have an appropriate  
22 level of detail given the time constraints and given the fact  
23 that to me what what these are designed to do is to give the  
24 plaintiff notice of the defenses and as well sort of set the  
25 parameters for discovery. So for this reason, I am going to be

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1 denying the motion to strike. Ms. Griffith, again you have the  
2 thanks of the Court, as does your firm.

3 If you wanted to stay on this case for a longer  
4 purpose, if you wanted to assist Mr. Jones with discovery, I  
5 would certainly be interested in that. If you feel that is  
6 something you would need to discuss with Mr. Jones and with  
7 your colleagues at your firm, or if you have other things  
8 keeping you busy, I understand that as well.

9 MS. GRIFFITH: Yes, your Honor.

10 Unfortunately, I don't think I have the time available  
11 or my law firm's resources available at the moment. I  
12 appreciate the opportunity to participate for the purpose this  
13 limited purpose.

14 THE COURT: I will keep you in mind for another  
15 limited purpose. I will go back to the other issues on the  
16 docket for the remainder of the litigation. Ms. Griffith, if  
17 you want to get off the call, that is fine.

18 MS. GRIFFITH: Thank your Honor.

19 THE COURT: Thank you again. I am sorry for the late  
20 notice to you, but you will know for next time, I actually do  
21 want oral argument.

22 MS. GRIFFITH: Yes, your Honor. Thank you.

23 (Ms. Griffith has been excused from the call)

24 THE COURT: Mr. Jones, are you still there, sir?

25 MR. JONES: Yes, I am, Judge.

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1           THE COURT: Mr. Jones, it seems to me that the next  
2 stage is discovery in the case, and I don't know that we have  
3 had occasion to talk about discovery, but I have seen a  
4 proposed case management plan from your adversaries.

5           Have you seen that document, sir, the case management  
6 plan form?

7           MR. JONES: Yes, I have, your Honor.

8           THE COURT: Do you agree with the dates that are  
9 contained in it, sir?

10          MR. JONES: Yes, I think they're accurate, yes.

11          THE COURT: Is there something you wanted to add to  
12 them, sir?

13          MR. JONES: Well, the defendants hadn't, as requested,  
14 filed or made available to the plaintiff the medical records  
15 and/or the criminal records for which they sought under  
16 criminal law.

17          THE COURT: Let me back up a moment. Have you signed  
18 the releases for those items?

19          MR. JONES: Yes, those releases were signed and  
20 delivered to the defendants some time ago.

21          THE COURT: I will tell you my own experience, and I  
22 am a Federal Judge, sometimes those records can be difficult in  
23 obtaining. Let me talk to Ms. DeCastro on this issue. Did you  
24 receive the releases, Ms. DeCastro?

25          MS. DeCASTRO: Yes, your Honor. I have one point on

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1 the releases. The medical release we received back from  
2 plaintiff is for the wrong dates. It seems plaintiff was  
3 arrested on January the 27th of 2012, and the release he  
4 returned for Bellevue Hospital was dated February 23, 2012 --  
5 sorry -- April 23rd of 2012. As part of my initial  
6 disclosures, part of my document request and interrogatories, I  
7 am going to send plaintiff a new release for the pertinent  
8 dates in this matter.

9 THE COURT: Mr. Jones, do you understand that, sir?

10 MR. JONES: Yes, I do, your Honor.

11 THE COURT: So you'll be on the lookout for that  
12 document. I know you will sign it once you get it. All right.  
13 Let me understand this: Mr. Jones, in any of our prior  
14 discussions have I spoken to you about the process of  
15 discovery?

16 MR. JONES: No. I received a notice of discovery.  
17 No, that is not true, your Honor.

18 No, no, no, I don't think we have.

19 THE COURT: Let me talk to you about it, please, sir.

20 The purpose of discovery is for each side to get a  
21 sense of the factual bases for the claims and for the defenses  
22 in this case. What typically happens in cases just like this  
23 one is that you will be asked to give the documents that you  
24 you have that relate to the issues in this case. For the  
25 medical records, we have already talked about how Ms. DeCastro

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1 can get her hands on them. For records of your custodial  
2 status, I think she can get those as well.

3 If, for example, sir, you have records in your cell  
4 about things that have happened to you that are relevant to  
5 this litigation, not some other complaint you may have, but  
6 this litigation, you will be asked to make a copy of those and  
7 to give them to Ms. DeCastro. By the same token, sir, you are  
8 permitted to ask her for information that would bear on your  
9 claims. Do you understand what I have said thus far, sir?

10 MR. JONES: Yes, I do, Judge.

11 THE COURT: Ms. DeCastro, let me ask you. I won't  
12 tell Mr. Jones what to do, but I am just wondering, what  
13 documents would you have or could you get that would bear on  
14 the particular claims that are at issue in this complaint?

15 MS. DeCASTRO: Yes, your Honor.

16 Currently I just recently received the District  
17 Attorney file. We will be turning that over to plaintiff  
18 hopefully as part of our initial disclosures. It is a little  
19 bit lengthy, but I do expect to get it and turn it over to  
20 plaintiff soon.

21 We also have, I have a detective document produced by  
22 my clients related to his arrest and the investigation that led  
23 to plaintiff's prosecution and arrest.

24 THE COURT: All right. Do you have the ability to  
25 obtain the records of his time in custody?

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1 MS. DeCASTRO: You mean his Department of Corrections  
2 records?

3 THE COURT: That is what I am saying, yes. Excuse me.

4 MS. DeCASTRO: I believe I do.

5 The only concern, sometimes the Department of  
6 Corrections will give us a little bit of push-back if it is not  
7 a Department of Correction case in getting plaintiff's  
8 institutional folder, but I can at least try to get it, and if  
9 I get push-back, I can ask plaintiff to provide consent for  
10 that.

11 THE COURT: Do you need his consent or will a court  
12 order suffice?

13 MS. DeCASTRO: A court order well definitely suffice.

14 THE COURT: If you send me a court order for those  
15 records, I will sign it because I am sure Mr. Jones would like  
16 to have a copy of them as well.

17 MS. DeCASTRO: Yes, your Honor.

18 THE COURT: Are there other documents that you have or  
19 that you contemplate obtaining from sort of parties involved in  
20 this matter who are not Mr. Jones?

21 MS. DeCASTRO: At this time? Obviously, there are  
22 always documents that can arise later. I have seen notes about  
23 videos. I don't believe I have those videos yet. I don't know  
24 if those videos would be saved, but that is something I am  
25 intending to get at some point. Besides that, I do have a lot

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1 of paper discovery in this case I have obtained from the  
2 District Attorney's Office and from my clients.

3 THE COURT: Mr. Jones, again, sir, I can't be your  
4 lawyer, and you don't want me to be, but I do think that what  
5 I've just been talking about with Ms. DeCastro would be very  
6 close to if not entirely the universe of documents that you  
7 should have and you should be looking at in connection with  
8 your claims.

9 If you need to ask her for additional documents, you  
10 can certainly do that. It is my understanding by this call I  
11 am asking her to produce the District Attorney's Office file,  
12 the arrest and investigation documents that she mentioned  
13 earlier, the Department of Corrections materials, with or  
14 without my order, the videos and any medical records she  
15 obtains as a result of the releases. Thank you, sir.

16 All right, sir?

17 MR. JONES: Yes, your Honor.

18 THE COURT: Ms. DeCastro, is there anything that you  
19 need from Mr. Jones that we can talk about in this call?

20 MS. DeCASTRO: Yes, your Honor, there is just one more  
21 thing I just thought about while we were talking.

22 The criminal court file I have not yet received. That  
23 is something we requested and will hopefully get, expect to get  
24 soon. Sometimes that takes a little bit of time, but besides  
25 that we need the medical releases from plaintiff, we need the



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1 global 16050, which is authorization to release all of  
2 plaintiff's prior arrest records, and we need that release  
3 because plaintiff has claimed damages for false arrest in this  
4 matter, and any damages for emotional distress related to that  
5 false arrest may be cut off by prior arrests. In discovery, we  
6 will be seeking that release.

7 THE COURT: Is it fair to say, Ms. DeCastro, what  
8 you're looking for from Mr. Jones in the first instance is his  
9 signature on several releases?

10 MS. DeCASTRO: Yes, your Honor. There are some  
11 interrogatories I will leave space for plaintiff to fill in,  
12 but it is mostly releases.

13 THE COURT: Mr. Jones, you should be on the lookout  
14 for releases from Ms. DeCastro. I will not tell you what to  
15 do, sir, but I am going to tell you if you don't sign them, she  
16 won't get the documents and then you won't get the documents.

17 If you want these documents, and I suspect you do,  
18 please sign the releases and return them to her, okay, sir?

19 MR. JONES: Yes, I understand, Judge.

20 THE COURT: Sir, Ms. DeCastro mentioned the term,  
21 "interrogatories." Let me explain to you what those are. They  
22 are questions that litigants can pose to each other. Sometimes  
23 some people want to clarify dates or events or who might have  
24 been present.

25 For example, Ms. DeCastro could ask you in an

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1 interrogatory who was present at a certain event, who was  
2 present on a certain day?

3 That is part of the discovery process. You should not  
4 be surprised to get them. If you wish to send discovery  
5 interrogatories of your own, you may do that. You might want  
6 to look at hers for format, but that is the idea of them.

7 Sometimes there are something called requests for  
8 admissions, and what that is, she may ask you to admit that a  
9 certain thing happened on a certain day or that a certain, you  
10 know, that February 14th was on a Sunday this year or something  
11 like that, just things of that nature.

12 Then, finally, there are depositions. Ms. DeCastro,  
13 is it your intention to take Mr. Jones' deposition?

14 MS. DeCASTRO: Yes, your Honor.

15 THE COURT: Are there other depositions that you  
16 intend to take?

17 MS. DeCASTRO: Your Honor, we believe there may have  
18 been other people present when Mr. Jones was arrested on this  
19 matter, so we may take their depositions once we can figure out  
20 who was around.

21 THE COURT: Mr. Jones, do you know what a deposition  
22 is, sir?

23 MR. JONES: Yes, I do, Judge.

24 THE COURT: Have you ever been at a deposition?

25 MR. JONES: Yes, I have.

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1           THE COURT: There may be depositions sought by Ms.  
2 DeCastro. You have the ability to seek to depose people,  
3 although that can sometimes be complicated when you're  
4 incarcerated. Sometimes folks have said that they don't need  
5 depositions, sometimes folks have done depositions by written  
6 questions, writing a list of questions to people which would be  
7 somewhat similar to an interrogatory. I want to make sure  
8 you're aware of the various things that can happen in  
9 discovery.

10           I will let you both know that I will sign the  
11 discovery plan and case management plan you have sent my way.  
12 It is my very strong preference not to extend those dates. If  
13 any of you, either of you, has any problem, you will let me  
14 know right away and I will see what I can do to solve the  
15 problem. I will also just make sure -- look, I just don't want  
16 to extend this. Please tell me, I guess I am asking you to  
17 start early with your discovery requests and with answering the  
18 discovery requests.

19           I recognize, Ms. DeCastro, for some things you are  
20 dependent on a third party, but you'll let me know if I need to  
21 get involved, all right? Let me look again at what I have.

22           What I will likely do is convene a conference at the  
23 end of fact discovery, which is currently scheduled to close on  
24 the 25th of June. Ms. DeCastro, do you expect expert discovery  
25 in this case?

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1 MS. DeCASTRO: No, your Honor.

2 THE COURT: Mr. Jones, do you expect having expert  
3 discovery in this case?

4 MR. JONES: At this point in time, I can't say yes or  
5 no, your Honor, only because there are a lot of things that  
6 still haven't been totally developed.

7 THE COURT: I understand.

8 MR. JONES: I will reserve.

9 THE COURT: I won't commit you.

10 I was trying to get a sense. We'll keep the expert  
11 discovery deadlines in place. I will talk to you both after  
12 the close of fact discovery to make sure that fact discovery  
13 has concluded and to talk with you both about how you would you  
14 like this litigation to proceed.

15 Obviously, and this is the voice of eternal optimism  
16 here, if at any point both of you are interested in trying to  
17 settle the case, you will let me know if it would be useful to  
18 have the case referred to the magistrate judge in this matter  
19 or referred to a mediator or something different than that.  
20 Just know that we are available for that purpose as well.

21 From my perspective, what I will do is I will endorse  
22 the case management plan and send it to both of you and I will  
23 put in a date for another conference. Ms. DeCastro, you can  
24 understand, please, and you will let me know if you need an  
25 order to this effect, for that particular proceeding we will

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1 have a telephonic conference as we are today.

2 MS. DeCASTRO: Yes, your Honor.

3 THE COURT: Mr. Jones, is there anything else we  
4 should be discussing today, sir?

5 MR. JONES: Yes, your Honor.

6 Being that I am in the place that I am, unfortunately,  
7 I don't have an extra copy of my 1983, the original complaint  
8 that was filed, and it is my request from the People, the  
9 defendants that I receive a copy from the Courts.

10 THE COURT: Ms. DeCastro, can you include a copy of  
11 his complaint with your releases?

12 MS. DeCASTRO: Yes, your Honor.

13 THE COURT: That is fine.

14 Anything else, Mr. Jones?

15 MR. JONES: The issue of appointment of counsel, will  
16 I be able to peruse that option in the future or is that cut  
17 off from me until after the interrogatories and discovery?

18 THE COURT: Let me answer that as best I can. I am  
19 able at times to solicit or ask for help from people to  
20 represent people for limited purposes. I also have the ability  
21 to order people to do things if it aids me. The appointment of  
22 Winston & Strawn to assist you on your motion to strike was  
23 designed principally to aid the court.

24 Let me ask, have you actually submitted a request for  
25 pro bono counsel, sir?

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1           MR. JONES: No, I haven't, because of the fact all of  
2 the things that have been bombarding me, I haven't had an  
3 opportunity, but I sought to do so at the earliest possible  
4 convenience.

5           THE COURT: If and when you submit the form to me, I  
6 will take that under advisement and talk to our Pro Se Office  
7 what is best in that circumstance.

8           MR. JONES: Thank you, Judge.

9           THE COURT: Ms. DeCastro, is there anything else we  
10 should be talking about today?

11          MS. DeCASTRO: No, your Honor.

12          THE COURT: Thank you very much for arranging this  
13 call.

14          MS. DeCASTRO: Thank you so much.

15          MR. JONES: Thank you.

16          THE COURT: Goodbye to both of you.

17          (Court adjourned)